

Alan F. Ciamporcero
Executive Director

Federal Regulatory Relations
1275 Pennsylvania Avenue, N.W. Suite 400
Washington, D.C. 20004
(202) 383-6416

PACIFIC  **TELESIS**
Group-Washington

DOCKET FILE COPY ORIGINAL

December 16, 1994

DEC 16 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Mr. Caton:

Re: *CC Docket No. 87-266, Telephone Company-Cable Television Cross Ownership Rules, Section 63.54-63.58*

RM-8221, Amendments of Parts 32, 36, 61, 64, and 69 of the Commission's Rules to Establish and Implement Regulatory Procedures for Video Dialtone Service

On behalf of Pacific Telesis Group, Pacific Bell, and Nevada Bell, please find enclosed an original and six copies of their "Comments" in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,



Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DEC 1 6 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

TELEPHONE COMPANY-CABLE TELEVISION
Cross-Ownership Rules,
Section 63.54-63.58

and

Amendments of Parts 32, 36, 61, 64,
and 69 of the Commission's Rules to
Establish and Implement Regulatory
Procedures for
Video Dialtone Service

CC Docket No. 87-266

RM-8221

**COMMENTS OF THE PACIFIC TELESIS GROUP,
PACIFIC BELL AND NEVADA BELL**

Pacific Telesis Group, Pacific Bell and Nevada Bell
(hereinafter "Pacific") respond to the Commission's Third Further
Notice of Proposed Rulemaking in the above referenced docket.¹

¹ Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54 - 63.58 and Amendments of Parts 32, 36, 661, 64 and 69 of the Commission's Rules to Establish and Implement Regulatory Procedures for Video Dialtone Service, CC Dkt. No. 87-266, Second Report & Order, Recommendation to Congress and Second Further Notice of Proposed Rulemaking, 7 FCC Rcd. 5781 (1992) ("Second Report & Order"); Memorandum Opinion and Order on Reconsideration and Third Further Notice of Proposed Rulemaking, ("FNPRM Order"), FCC 94-269, November 7, 1994.

I. CARRIERS SHOULD BE PERMITTED THE FLEXIBILITY TO DESIGN THEIR NETWORKS TO MEET CONSUMER EXPECTATIONS.

The Commission seeks comments on the merits of digital transmission to provide capacity for multiple programmers. The Commission specifically inquires about the GTE approach.²

While the Commission's inquiry into digital technology may provide it with an assessment of the state of that technology, the Commission should not require all digital VDT facilities. To do so would reverse its previous conclusion that mandating specific technology, network architecture, technical parameters or minimum switching requirements would not be in the public interest.³ The Commission properly concluded that video dialtone (VDT) is technology neutral and that regulatory flexibility will permit VDT to develop according to market needs and technological innovations.⁴

In a competitive marketplace, an all digital VDT network will not be financially attractive nor meet customer expectations. Digital service requires additional digital equipment in the network and a set top converter for the consumer. Consumers will not be willing to pay additional costs for digital services which are currently available in analog format. Given the competitive video services marketplace, VDT providers will be unable to recover the

² FNPRM Order, para. 271.

³ Second Report & Order, para. 45, n.104.

⁴ Second Report & Order, para. 45.

additional cost except where customers are willing to pay for perceived benefit.

Moreover, customer expectations require network flexibility. Pacific endorses GTE's approach to the extent that it recognizes the need for both analog and digital capacity. Similar to GTE's proposal, our network will offer 70 analog channels and 150-300 digital channels.⁵ Unlike GTE, however, our network plans will be compatible with existing TVs and VCRs and will not require a set top box for analog service delivery. Our VDT facilities have been designed to meet consumer expectations for both analog and digital services. For example, customers in areas with poor off-air reception will expect a basic service to provide high quality analog service. These customers may have multiple analog sets. Service should be made available to these customers without their need to buy or lease digital set top converters for each of their set.

Customers who simply want premium broadcast movie, sports and news services should also be able to receive these additional services using their existing equipment without the need to buy or lease set top converters. They also should be able to use their existing VCRs and TV features without restriction.

⁵ The number of digital channels will depend on the extent of compression.

On the other hand, customers who want interactive and digital specialized broadcast⁶ services will require a set top converter. The set top converter will supplement the delivery of existing analog televisions and decode the digital signal to convert it to an analog signal which the end user's television can accommodate.⁷ Similarly, customers who will want point-to-point services for interactions with video information providers will also need a set top converter.

A network to meet all of these customer expectations must carry both analog and digital services. Analog service delivery must be available until digital services become sufficiently dominant to allow us to consider discontinuing analog transport. That may take as many as 15 or 20 years. Over time, digital decoders may become integral to TVs and service providers may begin to switch to digital transmission. However, that transition should not be forced on consumers but allowed to proceed at a pace dictated by the market place. Just as FM radio transmission did not replace AM radio transmission, analog TV service should be allowed to serve the market place until customers decide otherwise.

⁶ The term "broadcast" in this context refers to transmission from one to many recipients simultaneously and not to off-air broadcast services.

⁷ The tuning range of most TVs does not extend into the 200 channel range.

II. CHANNEL SHARING ARRANGEMENTS CAN BE STRUCTURED TO ACCOMPLISH COMMISSION OBJECTIVES.

The Commission has tentatively concluded that channel sharing arrangements can offer significant benefits to consumers, programmer customers and VDT providers.⁸ Our VDT applications propose an arrangement for Standard Service Channels which we continue to believe is consistent with the Commission's channel sharing principles.⁹ However, the SSC is only one of several potential channel sharing arrangements proposed which could accomplish the goals intended by the SSC and which were recognized by the Commission¹⁰. We would be willing to consider other common channel sharing alternatives to our SSC proposal.¹¹

⁸ FNPRM Order, para. 274.

⁹ We propose to allocate 10-15 analog channels as Standard Service Channels (SSC). The SSC would carry off-air video programming as selected by the customer-programmer who would act as the steward (Administering customer-programmer or ACP) of those shared channels. The ACP would resell the SSC to any other customer-programmer on nondiscriminatory terms and conditions. Pacific Bell Applications, W-P-C 6913, 6914, 6915, 6916 ("Applications").

¹⁰ As the Commission concluded, shared channels offer the potential to increase the number of programmers on the platform, thus encouraging diverse programming options. Shared channels would also enable multiple video programmers to offer full service packages to consumers as well as maximize the use of the carrier's facilities to the benefit of VDT providers. FNPRM Order, para. 274.

¹¹ Pacific Bell has also indicated its willingness to performing the administrative function ourselves, if so permitted. Applications, p. 17.

We endorse the Commission's decision to avoid prescribing one kind of sharing arrangement at this time but to establish rules and policies. Clearly, carriers agree in the concept, if not the execution, of common channel sharing, given the number of shared channel management VDT proposals.¹² In addition to the plan proposed in our applications, we offer the following alternatives for the Commission's consideration. A VDT network provider should be permitted to designate an allocation of channels to be shared based on its analysis of its total VDT offering. The shared or common channels could be managed by a programmer-customer willing to undertake tariffed performance requirements that would ensure that the goals intended by sharing channels are accomplished. Such requirements may include, for example, demonstrating the ability to provide the program content as proposed for the common channels, demonstrating financial ability (through financial statements, credit worthiness or the ability to post a performance bond) to pay for transport and other operating costs, committing to a significant term as the shared channel manager, committing to include off-air, and public, educational and government (PEG) channels as part of the shared channels, and agreeing to make all shared channels available to other customer-programmers on a nondiscriminatory basis.

¹² The content owner will have the final say on the merit of the common channels arrangement. They will decide whether they will permit their content to be shared.

In the event of multiple requests for the shared channels, the requesters could submit written plans demonstrating their ability and commitment to furthering the purposes of the shared channels.¹³ Objective criteria included in the tariff could be used to evaluate the proposals. For example, one criteria could be the anticipated viewership of the proposed common channel content as determined by published ratings. That would determine the extent to which a proposed offering will maximize the probability that the common channels will be shared by other video information providers.

The shared channel manager would be responsible for administering the common channels, including procuring the common channel programming and reselling the common channels to other customer-programmers. Pacific believes that this type of common channel arrangement could accomplish the Commission's objectives and enhance the commercial viability of a competitive alternative to the existing video delivery basis.

III. PREFERENTIAL TREATMENT SHOULD BE AUTHORIZED AND VOLUNTARY.

The Commission seeks additional information on the question of preferential treatment for various classes of video

¹³ As recognized by the Commission, shared channels offer the potential to increase the number of programmers on the platform, thus encouraging diverse programming options. Shared channels also enable multiple video programmers to offer full service packages to consumers as well as maximizing the use of the carrier's facilities to the benefit of VDT providers by minimizing unnecessary content duplication.

programmers such as noncommercial programmers (which include not-for-profit broadcasters (PBS and religious programs), non-commercial video programmers (CSPAN), and PEG providers); and commercial programmers including broadcasters.¹⁴

Pacific believes that the Commission should authorize carriers to offer preferential treatment, including discounted prices, at the carrier's option.¹⁵ The carrier's election would be reflected in its VDT tariff.

The Commission should not require such special treatment and it is not clear that it has the legal authority to require such treatment. If the Commission should decide to require such treatment it should be extremely limited, given the effects of such treatment on the carrier's business. In this emerging market and business structure, maximum flexibility should be afforded.

With regard to PEG channels, the transport of such channels appears to be subject to state commission jurisdiction. Pacific is committed to working with cities, schools and community groups to develop innovative approaches to public, educational and government services. The deployment of broadband networks will

¹⁴ FNPRM Order, paras. 180-284.

¹⁵ As part of our participation in Education First, a private sector initiative to accelerate deployment of education technology in California, Pacific Bell will work with the California Public Utilities Commission to develop special educational access rates that will provide affordable connectivity on an on-going bases for all schools and libraries in the state.

enable these groups to develop new services and applications that operate interactively, not just the traditional one-way analog broadcast format of traditional PEG channels.

Respectfully submitted,

PACIFIC TELESIS GROUP
PACIFIC BELL
NEVADA BELL

Lucille M. Mates

JAMES P. TUTHILL /JLW
LUCILLE M. MATES

140 New Montgomery Street, Rm. 1526
San Francisco, California 94105
(415) 542-7654

JAMES L. WURTZ

1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 383-6472

Their Attorneys

Date: December 16, 1994

CERTIFICATE OF SERVICE

I, Chuck Nordstrom, hereby certify that copies of the foregoing "COMMENTS OF THE PACIFIC TELESIS GROUP, PACIFIC BELL AND NEVADA BELL" concerning CC Docket No. 87-266 were served by hand or by first-class United States mail, postage prepaid, upon the parties appearing on the attached service list this 16th day of December, 1994.

BY: Chuck Nordstrom
Chuck Nordstrom

PACIFIC BELL
140 New Montgomery Street
San Francisco, CA 94105

SERVICE LIST

The Honorable Reed E. Hundt*
Chairman
Federal Communications
Commission
1919 M Street, N. W.
Room 814
Washington, D. C. 20554

The Honorable Andrew C. Barrett*
Commissioner
Federal Communications
Commission
1919 M Street, N. W.
Room 826
Washington, D. C. 20554

The Honorable Rachelle B. Chong*
Commissioner
Federal Communications
Commission
1919 M Street, N. W.
Room 844
Washington, D. C. 20554

The Honorable Susan Ness*
Commissioner
Federal Communications
Commission
1919 M Street, N. W.
Room 832
Washington, D. C. 20554

The Honorable James H. Quello*
Commissioner
Federal Communications
Commission
1919 M Street, N. W.
Room 802
Washington, D. C. 20554

Gerald P. Vaughan, Deputy Chief*
Private Radio Bureau
Federal Communications
Commission
2025 M Street, N. W.
Room 5002
Washington, D. C. 20554

Kathleen M. H. Wallman, Chief*
Common Carrier Bureau
Federal Communications
Commission
1919 M Street, N. W.
Room 500
Washington, D. C. 20554

A. Richard Metzger, Deputy Chief*
Common Carrier Bureau
Federal Communications
Commission
1919 M Street, N. W.
Room 500
Washington, D. C. 20554

Kathleen B. Levitz, Deputy Chief*
Common Carrier Bureau
Federal Communications
Commission
1919 M Street, N. W.
Room 500
Washington, D. C. 20554

David Krech*
Common Carrier Bureau
Federal Communications
Commission
1919 M Street, N. W.
Room 500
Washington, D. C. 20554

* BY HAND

Gregory J. Vogt, Deputy Chief*
Cable Services Bureau
Federal Communications
Commission
2033 M Street, N. W.
Room 918
Washington, D. C. 20554

David Nall, Deputy Chief*
Tariff Division
Federal Communications
Commission
1919 M Street, N. W.
Room 518
Washington, D. C. 20554

James R. Keegan, Chief*
Domestic Facilities Division
Federal Communications
Commission
2025 M Street, N. W.
Room 6010
Washington, D. C. 20554

Olga Madruga-Forti, Chief*
Domestic Services Branch
Federal Communications
Commission
2025 M Street, N. W.
Room 6008
Washington, D. C. 20554

James D. Schlichting, Chief*
Policy and Program Planning Div.
Federal Communications
Commission
1919 M Street, N. W.
Room 544
Washington, D. C. 20554

Gregory Lipscomb*
Policy and Program Planning Div.
Federal Communications
Commission
1919 M Street, N. W.
Room 544
Washington, D. C. 20554

Gary Phillips*
Policy and Program Planning Div.
Federal Communications
Commission
1919 M Street, N. W.
Room 544
Washington, D. C. 20554

Todd F. Silbergeld*
Policy and Program Planning Div.
Federal Communications
Commission
1919 M Street, N. W.
Room 544
Washington, D. C. 20554

Donna Lampert*
Policy and Program Planning Div.
Federal Communications
Commission
1919 M Street, N. W.
Room 544
Washington, D. C. 20554

INTERNATIONAL TRANSCRIPTION*
SERVICE, INC. (ITS)
1919 M Street, N. W.
Room 246
Washington, D. C. 20554

* BY HAND

The Honorable Togo D. West, Jr.
Secretary of the Army
The Pentagon
Washington, D. C. 20310

The Honorable Jon H. Dalton
Secretary of the Navy
The Pentagon
Washington, D. C. 20350

Governor Pete Wilson
Office of the Governor
State Capitol
Sacramento, CA 95814

James S. Blaszak
Patrick J. Whittle
Gardner, Carton & Douglas
Attorneys for AD HOC
TELECOMMUNICATIONS USERS
COMMITTEE
1301 K Street, N. W.
Suite 900, East Tower
Washington, D. C. 20005

Stuart F. Feldstein
Matthew D. Emmer
FLEISCHMAN AND WALSH
Attorneys for CENTURY
COMMUNICATIONS CORPORATION
1400 16th Street, N. W.
6th Floor
Washington, D. C. 20036

James K. Hahn, City Attorney
Pedro B. Echeverria,
Senior Assistant City Attorney
Edward J. Perez
Assistant City Attorney
CITY OF LOS ANGELES, CALIFORNIA
Room 1800, City Hall East
200 North Main Street
Los Angeles, California 90012

Brenda L. Fox
Michael S. Schooler
Suzanne M. Perry
DOW, LOHNES & ALBERTSON
Attorneys for
CABLEVISION INDUSTRIES, INC.
COMCAST CABLE COMM., INC.
1255 - 23rd Street, N. W.
Suite 500
Washington, D. C. 20037

Debra L. Lagapa
LEVINE, LAGAPA AND BLOCK
Attorneys for the CALIFORNIA
BANKERS CLEARING HOUSE AND
THE COUNTY OF LOS ANGELES
1200 Nineteenth Street, N. W.
Suite 602
Washington, D. C. 20036

Werner K. Hartenberger
Laura H. Phillips
Jane E. Jackson
Attorneys for COX
ENTERPRISES, INC.
1255 Twenty-Third St., N. W.
Suite 500
Washington, D. C. 20037

Daniel L. Brenner
David L. Nicoll
Counsel for the NATIONAL CABLE
TELEVISION ASSOCIATION, INC.
1724 Massachusetts Avenue, N. W.
Washington, D. C. 20036

Peter Arth, Jr.
Edward W. O'Neill
Mark Fogelman
Attorneys for the PEOPLE OF
THE STATE OF CALIFORNIA AND
THE PUBLIC UTILITIES
COMMISSION OF THE STATE
OF CALIFORNIA
505 Van Ness Avenue
San Francisco, California 94102

Alan J. Gardner
Vice President, Regulatory
and Legal Affairs
CALIFORNIA CABLE TELEVISION
ASSOCIATION
4341 Piedmont Avenue
Oakland, California 94611

Jeffrey Sisheimer
Director of Regulatory Affairs
CALIFORNIA CABLE TELEVISION
ASSOCIATION
4341 Piedmont Avenue
Oakland, California 94611

Frank W. Lloyd
MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY, AND POPEO, P.C.
Attorneys for the CALIFORNIA
CABLE TELEVISION ASSOCIATION
701 Pennsylvania Avenue, N. W.
Suite 900
Washington, D. C. 20004

Angela J. Campbell
Citizens Communications Center
Institute for Public
Representation
GEORGETOWN UNIVERSITY LAW
CENTER
600 New Jersey Avenue, N. W.
Washington, D. C. 20001

Andrew Jay Schwartzman
Counsel for "Petitioners"
MEDIA ACCESS PROJECT
2000 M Street, N. W.
Washington, D. C. 20036

Gary D. Bass
Executive Director
OMB WATCH
1731 Connecticut Avenue, N. W.
Washington, D. C. 20009-1146

Nicholas P. Miller
Joseph Van Eaton
MILLER, CANFIELD, PADDOCK
AND STONE
Attorneys for the LOCAL
COMMUNITY COALITION
1225 19th Street, N. W.
Suite 400
Washington, D. C. 20036

William J. Cowan
General Counsel
NEW YORK STATE DEPARTMENT
OF PUBLIC SERVICE
Three Empire State Plaza
Albany, New York 12223

Ronald G. Choura
Policy Division
MICHIGAN PUBLIC SERVICE
COMMISSION STAFF
6465 Mercantile Way
P. O. Box 30221
Lansing, Michigan 48909-7721

Susan G. Hadden
Chair
Public Policy Committee
ALLIANCE FOR PUBLIC TECHNOLOGY
901 Fifteenth St., N. W.
Suite 230
Washington, D. C. 20005-2301

Daryl L. Avery
General Counsel

Peter G. Wolfe
Staff Counsel
PUBLIC SERVICE COMMISSION OF
THE DISTRICT OF COLUMBIA
450 Fifth Street, N. W.
Washington, D. C. 20001

Michael S. Pabian
Attorney for AMERITECH
2000 West Ameritech Center Drive
Room 4H76
Hoffman Estates, IL 60196-1025

Henry Geller
Barbara O'Connor
Members of
THE ALLIANCE FOR PUBLIC
TECHNOLOGY
1750 K Street, N. W.
Suite 800
Washington, D. C. 20006

Kenneth J. Benner
President
AMERICAN COUNCIL ON CONSUMERS
AWARENESS, INC.
1251 No. Kent Street
P. O. Box 17291
St. Paul, MN 55117

Milton Bins
Faye M. Anderson
COUNCIL OF 100
1129 20th Street, N. W.
Suite 400
Washington, D. C. 20036

James T. Hannon
Attorney for
US WEST COMMUNICATIONS, INC.
1020 19th Street, N. W.
Suite 700
Washington, D. C. 20036

M. Robert Sutherland
Michael A. Tanner
Attorneys for BELLSOUTH
CORPORATION AND BELLSOUTH
TELECOMMUNICATIONS, INC.
4300 Southern Bell Center
675 West Peachtree Street, N. E.
Atlanta, Georgia 30375

Michael E. Glover
Edward Shakin
Attorneys for the BELL ATLANTIC
TELEPHONE COMPANIES
1710 H Street, N. W.
Washington, D. C. 20006

Robert M. Lynch
Richard C. Hartgrove
Jonathan W. Royston
Attorneys for SOUTHWESTERN BELL
TELEPHONE COMPANY
One Bell Center, Suite 3520
St. Louis, Missouri 63101

Gail L. Polivy
Attorney for GTE
Service Corporation
1850 M Street, N. W.
Suite 1200
Washington, D. C. 20036

John F. Raposa, HQE03J27
GTE Service Corporation
P. O. Box 152092
Irving, Texas 75015-2092

Robert M. Silber
Corporate Counsel
NATIONAL CAPTIONING
INSTITUTE, INC.
5203 Leesburg Pike
Suite 1500
Falls Church, VA 22041

Jordan Clark
President
UNITED HOMEOWNERS
ASSOCIATION
1511 K Street, N. W.
Third Floor
Washington, D. C. 20005

Kathleen O'Reilly
TURN
510 E. Street, S. E.
Washington, D. C. 20003

Joseph S. Faber, Esq.
Jackson, Tufts, Cole & Black
650 California Street
San Francisco, CA 94108

Maureen A. Scott
Assistant Counsel

E. Niel Ritchie
Director of Administration
INSTITUTE FOR AGRICULTURE
AND TRADE POLICY
1313 Fifth Street, S. E.
Suite 303
Minneapolis, Minnesota 55414-1546

Veronica A. Smith
Deputy Chief Counsel

John F. Povilaitis
Chief Counsel
THE PENNSYLVANIA PUBLIC
UTILITY COMMISSION
P. O. Box 3265
Harrisburg, Pennsylvania 17021

R. Taylor Walsh
Executive Director
CapAccess
2002 G. Street, N. W.
B-1
Washington, D. C. 20052

Marilyn Mohrman-Gillis
General Counsel
Lonna M. Thompson
ASSOCIATION OF AMERICA'S PUBLIC
TELEVISION STATIONS
1350 Connecticut Avenue, N.W.
Suite 200
Washington, D. C. 20036